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Senate of Pennsylvania

April 5, 2019

Robert W. Gundlach, Jr.
Fox Rothschild LLP
Stone Manor Corporate Center
2700 Kelly Road Suite 300
Warrington, PA 18976

Re: Rockhill Quarry

Dear Mr. Gundlach:

I have received your letters of March 14 and April 3, 2019. I am writing now in response.

Contrary to your assertions, I have not had any involvement with Curtin & Heefner's representation of the Rockhill Environmental Preservation Alliance and others in this matter. My involvement has been limited to protecting public health and safety and the environment by working to ensure that Pennsylvania law is upheld as it relates to the operation of the quarry and any other proposed activities at the site. That is a goal which, presumably, your clients share.

Nevertheless, you should know that since I intend to stay active in this matter, as I believe that I have a duty to do so as an elected official, and since you have chosen to raise this issue in an apparent attempt to dissuade me from doing so, I have resigned from Curtin & Heefner to avoid so much as the appearance of any conflict.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Steven J. Santarsiero".

Steven J. Santarsiero

Cc: Patrick McDonnell, Secretary, PA DEP
Congressman Brian Fitzpatrick
State Representative Craig Staats



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April 3, 2019

The Honorable Steven J. Santarsiero
State Senator, 10th district
Senate Box 203010
Harrisburg, PA 17120-3010

Re: Rockhill Quarry, East Rock Hill Township, Bucks County, PA

Dear Senator Santarsiero:

As a follow up to my last letter to you, dated March 14, 2019, wherein I raised certain ethical issues as to your demand to DEP, in your capacity as both a PA State Senator and a Partner in the law firm of Curtin & Heefner, to conduct investigations with respect to the Rockhill Quarry. I have received additional correspondence in further support of my claim as to your conflict of interest.

First, I have enclosed a letter, dated March 18, 2019, from Attorney Schiller, who is representing East Rockhill Township in opposition to the operations at the Rockhill Quarry to DEP. In this letter, Attorney Schiller references certain conversations that she was having with counsel for DEP as to the Rockhill Quarry. In this letter, Attorney Schiller references a letter you sent, dated February 25, 2019, in your capacity as a PA State Senator, to DEP, as to the Rockhill Quarry. Attorney Schiller is clearly "throwing around your name" as a PA State Senator in furtherance of her argument for information from DEP to continue their attempts to close or restrict operations at the Rockhill Quarry. You were copied on this letter in your capacity as a PA State Senator; not as a Partner in the law firm of Curtin & Heefner.

Second, I have enclosed a letter, dated March 21, 2019, from your partner at Curtin & Heefner, Mark Freed, Esquire, to Scott MacNair, Esquire, concerning certain legal interpretations that your law firm is taking as to a Decision and Order recently rendered by United States District Court Judge McHugh. In this letter, your law firm first contests the proper forum to resolve the remaining issue in the pending litigation, then highlights some language in Judges McHugh's Decision and Order as to the asphalt plant. This letter clearly confirms your firm's continued

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representation, for a profit, of the Rockhill Environmental Preservation Alliance ("REPA") while you, in your capacity as a PA State Senator, advocate for DEP to investigate the quarry owner's compliance with the PA Mining Act in furtherance of REPA's claims.

These two letters continue to show a clear conflict of interest under the State Ethics Act. That is, you cannot actively pursue an investigation with DEP, with the intent to revoke my clients' mining permit, as you have publicly championed, while at the same time representing clients, for a profit, in an attempt to reach the same goal.

Sincerely,

Robert W. Gundlach, Jr.

Enclosures

cc: Patrick McDonnell, Secretary, DEP – w/enclosures
Michael J. Menghini, Pottsville District Mining Manager, DEP – w/enclosures
Patrick Patterson, Regional Director, Southeast Region, DEP – w/enclosures
Matt Burns, Esquire, Hanson Aggregates Pennsylvania, LLC – w/enclosures
Richard E. Pierson, President, R.E. Pierson Materials Corp. – w/enclosures
Curt Mitchell, R.E. Pierson Materials Corp. – w/enclosures



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March 14, 2019

The Honorable Steven J. Santarsiero
State Senator, 10th district
Senate Box 203010
Harrisburg, PA 17120-3010

Re: Rockhill Quarry, East Rock Hill Township, Bucks County, PA

Dear Senator Santarsiero:

This letter is in response to your letter to The Honorable Patrick McDonnell, dated February 14, 2019, concerning the Rockhill Quarry. I thought best to reply back to you as to your letter and copy the others.

Before I address the issues contained in your letter, I want to address an ethical issue that has recently been brought to my attention. I have been advised that, in addition to holding the position of a PA State Senator, you are a partner at the law firm of Curtin & Heefner. As you are aware, Curtin & Heefner is actively representing Rockhill Environmental Preservation Alliance, Inc. (aka REPA), along with several individuals, in opposition to operations proposed at the Rockhill Quarry. In fact, Curtin & Heefner has entered its appearance and obtained party status, on behalf of its clients, at (a) a recent DEP hearing on Pierson's application to DEP for an air quality permit for the permanent crushing equipment (which is now on appeal to the Environmental Hearing Board), and (b) hearings before the East Rockhill Township Zoning Hearing Board. In both of these legal proceedings, your law firm, Curtin & Heefner, has represented clients in opposition to operations at the Rockhill Quarry. In the ZHB proceedings, your partner, Mark Freed, cross examined a witness employed by the operator about certain interaction with DEP related to prior operations at the Rockhill Quarry.

Section 1103(a) of the Ethics Act provides that "No public official or public employee shall engage in conduct that constitutes a conflict of interest." The Ethics Act defines "conflict of interest" as follows:

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“Information not obtainable from reviewing a public document or from making inquiry to a publicly available source of information.”

The Act further defines “confidential information” and “business with which he is associated” as follows:

“Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or member of his immediate family is associated.”

“Any business in which the person or a member of the person’s immediate family is a director, officer, owner, employee or has a financial interest.”

It appears that you may have engaged in conduct that constitutes a “conflict of interest” under the Ethics Act by obtaining information and documentation from DEP, through your position as a PA State Senator, for the private pecuniary benefit of your business (i.e., the law firm of Curtin & Heefner). That is, you did not obtain this information and documentation the same way as a public citizen would have to obtain it and you then had the ability to share such information with your partners for the private pecuniary benefit of your law firm.

According to the Pennsylvania Supreme Court, “to violate the conflict of interest provision in subsection 1103(a) of the Ethics Act, a public official must be consciously aware of a private pecuniary benefit for himself, his family, or his business, and then must take action in the form of one or more specific steps to attain that benefit.” *Kistler v. Comm. State Ethics Com’n*, 22 A.3d 223, 231 (Pa. 2011). The key factor is whether the public official’s actions were at least partially motivated by private pecuniary benefit. *Id.* at 231-32. Where the public official uses his office to actively promote government action that is a step in attaining pecuniary benefit for a “business with which he is associated,” the public official very likely engages in conduct constituting a conflict of interest. *Id.* at 231-32.

Your actions as a PA State Senator, in demanding DEP to investigate prior operations at the Rockhill Quarry and attending private meetings with representatives of DEP, in an attempt to persuade DEP to revoke the mining permit issued for the Rockhill Quarry, while your law firm is billing clients to achieve the same result and assisting your law firm to achieve this result, appears to constitute a conflict of interest under the Ethics Act.

Did you disclose this potential conflict of interest to DEP when you demanded that DEP investigate if the owner/operator of the Rockhill Quarry properly satisfied the requirements for



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an "active operation" under the Mining Act? There were no such disclosures in your letters to DEP dated February 14, 2019, February 22, 2019 and February 25, 2019.

Let me leave you with one final comment on the subject to better put this issue in perspective. Assume for me, that Curtin & Heefner was representing the Rockhill Quarry owner/operator in this case, and not the protestants. Also assume that you, in your capacity as a PA State Senator, completed your "impartial" investigation on the subject and concluded that the DEP records accurately reflect that the quarry owner/operator properly removed the required tonnage each year to maintain their "active status" under the Mining Act. What do you think that the protestants would say about your investigation? They would say that you have a "conflict of interest" and should not, in light of your firm's representation of the quarry owner/operator, be involved in this investigation. I think that we both can agree on that point. So why should the fact that your firm is representing the protestants in this case be any different?

Now, let me turn to your letter.

First, I dispute your statement that my "zeal" in advocating for my client has led to a troubling disregard for the facts. I personally attended the meeting on January 19, 2019, at the Upper Bucks County Community College and observed how you "stirred up the crowd" with your promise to demand "proof and, if not, fight" to convince DEP to revoke my clients' mining permit. See line 33:10 of the video (part 1). I also reviewed the video referenced in your February 14th letter. After reviewing my notes and the video, I stand by my recitation of the facts as referenced in my prior letter, with one clarification.

Second, my "zeal", as you described it, may be related to your work as a PA State Senator (and a partner in the law firm of Curtin & Heefner), to persuade DEP to revoke my clients' mining permit and close down my clients' quarry business, without due process, and my work to keep them open and in business.

As to the specific topics referenced in your letter, I note the following with the same appropriate brevity as you did in your letter:

1. Credibility of Documents. Your letter references that the information establishing the continuous operation at the Rockhill Quarry, since the 1980s, is based on reporting by the Quarry owner/operator. You failed to reference that this information has also been reviewed and approved by DEP. I am unaware as to any concerns expressed by DEP as to the referenced information or an internal investigation being performed by DEP on the subject. Please review the letter sent by Michael J. Menghini, of DEP, to Senator McIhenney, dated May 15, 2018, confirming DEP's recognition of the Rockhill Quarry as an "active operation" (as defined in the PA Mining Act) and in accordance with the "applicable regulatory requirements" of DEP.



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2. The relationship between DEP and the Quarry. The use of the words “cozy” in describing the relationship between the DEP inspectors and the Quarry operators was said by Jim Pascale; not you. See line 56:56 of the video (part 1). However, you clapped and nodded in support for Jim when he finished his statement as to the “cozy relationship” and Congressman Fitzpatrick stated that “he agreed with everything he [Jim] said”. See line 2:55 of the video (part 2). The use of the words “may be getting too close” in describing the relationship between the DEP regulators and those being regulated are the words of Congressmen Fitzpatrick; not mine. See line 32:20 of the video (part 1). You stated that there are “serious questions about the credibility of [the DEP] records.” See line 31:50 of the video (part 1). Nevertheless, all of these accusations are unsubstantiated as is your implication that some type of improprieties took place between DEP employees and the representatives of the Quarry owner/operator as to the prior DEP reviews and inspections of the Rockhill Quarry. The only basis cited for your information is an article that was recently published in the Intelligencer. I now question if your accusations were being made to support and assist your law firm who is being compensated to represent the protestants in this case.

3. Retention Basin. You clearly suggested at this meeting that a liner be installed in the detention basins that were recently constructed at the subject property, at DEP’s direction, to better prevent ground water contamination. See line 37:30 of the video (part 1). However, you offered no evidence whatsoever as to any ground water contamination at the property or any engineering studies to support the installation of impervious liners.

4. Asbestos Abatement. Congressmen Fitzpatrick’s assistant, Lia, when addressing the alleged asbestos issue, referenced that DEP will require a misting machine to reduce dust, testing equipment and “fresh rock” to put on an area prior to it being blasted. See line 16:28 of the video (Part 1). She also referenced air monitoring on area properties and extensive air testing.

5. Asbestos Plant Operations. Your chief of staff, Rose, did reference the “permit” issued by DEP to my client for the hot mix asphalt plant as a “very preliminary” stage for the operation; with much more extensive reviews to follow. See line 19:54 of the video (part 1).

We agree that DEP should hold the Rockhill Quarry owner/operator to the letter of the law as they should do for all other quarry owners and operators in Pennsylvania. However, I do not agree, as you seem to be suggesting, that the Rockhill Quarry owner/operator, in this case, be held to “higher standards” than any other Quarry owners/operators in Pennsylvania.

Finally, I suggest you reconsider your demand, in your capacity as a PA State Senator, for DEP to commence a special investigation against the Rockhill Quarry, in light of the fact that your law firm is representing the protestants in pending cases before DEP. Your use of your PA State Senator credentials to gain “inside access” to DEP and then share that information with



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other attorneys in your law firm is inappropriate and may constitute a violation of the Ethics Act and my clients' due process rights related to their mining permit.

Please be guided accordingly.

Sincerely,

Robert W. Gundlach, Jr.

cc: Patrick McDonnell, Secretary, DEP
Michael J. Menghini, Pottsville District Mining Manager, DEP
Patrick Patterson, Regional Director, Southeast Region, DEP
Honorable Brian Fitzpatrick, Member of U.S. Congress
Honorable Craig T. Staats, Pennsylvania House of Representatives
Matt Burns, Esquire, Hanson Aggregates Pennsylvania, LLC
Richard E. Pierson, President, R.E. Pierson Materials Corp.
Curt Mitchell, R.E. Pierson Materials Corp.